

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CATHERINE MCKOY, MARKUS FRAZIER, and
LYNN CHADWICK, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

THE TRUMP CORPORATION and
DONALD J. TRUMP, in his personal capacity,

Defendants.

No. 1:18-cv-09936-LGS-SLC

**PLAINTIFFS' STATEMENT OF ADDITIONAL DISPUTED MATERIAL FACTS
PURSUANT TO LOCAL CIVIL RULE 56.1(b)**

Pursuant to Local Rule 56.1(b) of the Civil Rules of this Court and Rule III.C.6 of Your Honor's Individual Rules and Procedures for Civil Cases, Plaintiffs Catherine McKoy, Markus Frazier, and Lynn Chadwick submit the following statement of additional material facts as to which there exists a genuine issue to be tried in support of Plaintiffs' opposition to Defendants' motion for summary judgment.

I. TRUMP ENDORSED ACN IN EXCHANGE FOR [REDACTED]

Fact No. 1: In total ACN agreed to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Each time Trump and

ACN [REDACTED]

[REDACTED]

¹ Citations to "Ex." refer to the exhibits annexed to the June 16, 2023 Declaration of Christopher R. Le Coney.

[REDACTED] ACN's corporate representative testified that [REDACTED]

[REDACTED]

[REDACTED]

In total ACN agreed [REDACTED]

[REDACTED]

[REDACTED]

Fact No. 2: ACN [REDACTED] to appear twice on *The Celebrity Apprentice*,

[REDACTED]

[REDACTED]

Fact No. 3: Trump lawyers insisted that [REDACTED]

[REDACTED] but Trump's executive secretary acknowledged that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

II. TRUMP PROMOTED ACN [REDACTED]

Fact No. 4: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 5: Trump promoted ACN [REDACTED]

Fact No. 6: Trump promoted ACN [REDACTED]

Fact No. 7: Trump promoted ACN [REDACTED]

Fact No. 8: Trump promoted ACN [REDACTED]

Fact No. 9: Trump also promoted ACN in two episodes of his network TV show, *The Celebrity Apprentice*. ECF 534-36 (video footage), ECF 534-37 (video footage).

Fact No. 10: [REDACTED]

Fact No. 11: All of the Opportunity Discs [REDACTED]

Fact No. 12: ACN internally tracked the extent to which it was [REDACTED]

Fact No. 13: ACN pushed the [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Fact No. 14: ACN's approved marketing materials [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Fact No. 15: Trump's endorsement of ACN was [REDACTED]

[REDACTED]
[REDACTED]

III. TRUMP HAD CONTROL OVER THE MESSAGE HE CONVEYED REGARDING ACN

Fact No. 16: Each of the Trump-ACN contracts made clear that Trump had the sole right to determine [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Fact No. 17: Per that contractual right, Trump, and his employees acting at his direction, regularly exercised Trump's right to [REDACTED]

[REDACTED]
[REDACTED] ACN's marketing consultant Anne

Archer Butcher described the process for preparing the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 18: Defendants similarly [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 19: The Trump Corporation employees referenced above and others were all acting [REDACTED]

[REDACTED]

[REDACTED]

Fact No. 20: The performance of the endorsement relationship [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IV. TRUMP KNOWINGLY CONVEYED FRAUDULENT MESSAGES REGARDING ACN

A. Trump Falsely Claimed

Fact No. 21:

That clip was among the footage that

Fact No. 22: The statement Trump made in Fact No. 21 regarding

Fact No. 23: ACN did not offer

Fact No. 24:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. Trump Falsely Claimed [REDACTED]

Fact No. 25: Trump asserted that ACN's desktop videophone was [REDACTED]

[REDACTED]

[REDACTED]

Fact No. 26: Trump likewise claimed that the [REDACTED]

[REDACTED]

[REDACTED]

Fact No. 27: These statements were false. Defendants' expert conceded there was no basis for [REDACTED]

[REDACTED]

The desktop videophone [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 28: [REDACTED]

[REDACTED]

C. Trump Falsely Claimed He Was Endorsing ACN [REDACTED]

Fact No. 29: Trump represented that he was endorsing ACN [REDACTED]

[REDACTED]

[REDACTED]

Fact No. 30: This was false. Trump endorsed ACN because [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] According to Dr.

Keller, who will testify at trial that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

D. Trump Falsely Claimed He Endorsed ACN After [REDACTED]

Fact No. 31: In endorsing ACN, Trump stated that he had [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 32: He later testified that he asked his [REDACTED]

Fact No. 33: [REDACTED]

Fact No. 34: [REDACTED]

Fact No. 35: Trump also claimed that he [REDACTED]

Fact No. 36: The Trump Corporation is not in possession of [REDACTED]

[REDACTED] The Trump employees who helped manage the ACN relationship [REDACTED]

Fact No. 37: [REDACTED]

Fact No. 38: Trump's longtime secretary Rhona Graff [REDACTED]

Fact No. 39: In negotiating the agreements, the Trumps [REDACTED]

Fact No. 40: Anne Archer Butcher was the ACN marketing consultant who [REDACTED]

Fact No. 41: She likewise was not [REDACTED]

Fact No. 42: David Merriman, ACN's corporate representative, was likewise [REDACTED]

Fact No. 43: During the course of the Trump-ACN endorsement relationship, The Trump Corporation employees who [REDACTED]

Fact No. 44: Trump does not know [REDACTED]

E. Defendants Ignored [REDACTED]

Fact No. 45: As early as 2008, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 46: Graff could not recall [REDACTED]

[REDACTED]

[REDACTED]

Fact No. 47: In September 2010, a reporter contacted The Trump Corporation regarding [REDACTED]

[REDACTED]

Fact No. 48: In 2010, NBC [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 49: In 2014, a mother [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 50: [REDACTED]

Wall Street Journal

reporters started asking questions about [REDACTED]

█ see also James V. Grimaldi & Mark Maremont, *Donald Trump Made Millions From Multilevel Marketing Firm*, Wall Street J. (Aug. 13, 2015), <https://www.wsj.com/articles/trump-made-millions-from-multilevel-marketing-firm-1439481128>.

Fact No. 51: In March 2016, █

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F. Trump's Endorsement █

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Fact No. 52: Trump's endorsement █

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Fact No. 53: █

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Fact No. 54: ACN recognized that Trump's endorsement of ACN was █

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█

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 55: Trump's endorsement [REDACTED]

[REDACTED]

[REDACTED] Keller Rpt. ¶ 143

Fig. 2.

Fact No. 56: A confidential ACN memorandum stated that, [REDACTED]

[REDACTED]

[REDACTED]

Fact No. 57: The first time ACN appeared on *The Celebrity Apprentice*, [REDACTED]

[REDACTED]

[REDACTED]

Fact No. 58: An ACN financial analysis determined that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 59: Trump recognized that he was highly successful at [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 60: Trump's celebrity endorsement of ACN was [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 61: ACN was willing to [REDACTED]

[REDACTED]

[REDACTED]

Fact No. 62: [REDACTED]

[REDACTED]

[REDACTED]

G. The Plaintiffs Relied on Trump's Fraudulent Message in Deciding to Join ACN

Fact No. 63: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Fact No. 64: Trump’s endorsement was “the reason” the Plaintiffs joined ACN. McKoy Tr. 229:17-18; *accord* ECF 535 ¶ 3 (McKoy); ECF 536 ¶ 3 (Frazier); ECF 537 ¶ 3 (Chadwick).

Fact No. 65: Trump’s endorsement was the reason Cathy McKoy joined ACN. She recalled Trump communicating the message that if “you join this business and you do the work, you will see the money,” and she joined ACN “because of him,” stating that when “they put up Donald Trump, that’s what convinced [her] to sign into ACN.” Ex. 10 (McKoy Tr. 234:5-8, 245:4-12); *see also* McKoy Tr. 229:17-18, 256:19. McKoy recalled: “He [Trump] did the research on this business. He knows that this is a good business. I don’t know anything about business. So he knows. I’m going with what he says.” Ex. 10 (McKoy Tr. 245:13-20). McKoy recruited at least five IBOs, sold at least five ACN products or services, and purchased an additional two ACN services for herself. McKoy Tr. 237:21-239:8. For all of this, McKoy received just \$38 from ACN. Ex. 10 (McKoy Tr. 236:19-21).

Fact No. 66: Trump’s endorsement was the reason Lynn Chadwick joined ACN. At the time she invested in ACN, Chadwick worked as a custodian at a school district. ECF 552-1 at 8 (Chadwick Tr. 31:11-20). She did not have any sales experience. Chadwick Tr. 38:10-15. She viewed joining ACN as an investment, drawn in by the prospect of “residual income.” ECF 552-1 at 6-7 (Chadwick Tr. 24:25-25:7); Chadwick Tr. 33:13-34:7.

Chadwick joined ACN after being shown a video at a recruitment event that “expressed Donald Trump’s interest in the ACN business model” with a “snippet from The Apprentice show, which showed a very successful business model and low-risk opportunities for us to get involved on the ground level.” Ex. 10 (Chadwick Tr. 23:23-24:6). The “original jump off point for [her] interest in ACN was . . . the video that Donald Trump had implied that this whole process was a low-risk and easy and a no-brainer.” ECF 552-1 at 13-14 (Chadwick Tr. 148:19-149:4). And

Chadwick testified that her decision to join was influenced by Trump's endorsement. Chadwick Tr. 149:12-15. Chadwick paid to attend more than seventeen ACN training events but only ever recruited a single IBO (her son). Ex. 10 (Chadwick Tr. 47:6-48:17, 49:15-50:6).

Fact No. 67: The videophone was offered by ACN when Chadwick joined the company and it was among the ACN products she received training on. Chadwick Tr. 97:14-23; ECF 552-1 at 11 (Chadwick Tr. 140:14-19).

Fact No. 68: Frazier watched clips from ACN's appearance on *The Celebrity Apprentice* that featured ACN's desktop videophone product. ECF 552-2 at 8 (Frazier Tr. 16:2-19).

Fact No. 69: Trump's endorsement was the reason Frazier joined ACN. At the time he invested in ACN, Frazier worked at a fast-food restaurant. *Id.* at 3-4 (Frazier Tr. 11:22-12:10). He did not have any sales experience. Frazier Tr. 95:7-10. He viewed joining ACN as an investment, enticed by the prospect of "residual income." *Id.* 106:4-16.

Frazier testified that it was "Trump that gave me that motivation [to join ACN]." *Id.* 104:24-25. He testified that: "If Donald Trump had a company on a national television show, then I was sure he put his stamp of approval to say this is a company that anyone can join and be successful in." *Id.* 23:14-18. He further testified that the videos featuring Trump were the "words of motivation that made me" try to make money through ACN, Ex. 10 (Frazier Tr. 74:11-15), stating that "[i]f Donald Trump, a successful businessman as it is, vouches for a company like [ACN]," Frazier was "pretty sure" that he could use ACN to be "successful" too, Ex. 10 (Frazier Tr. 75:3-7). Mr. Frazier further testified that "the approval stamp of Mr. Donald Trump . . . was all I needed." Ex. 10 (Frazier Tr. 75:15-17). Frazier made a "maximum effort" to sign up his friends and family. Frazier Tr. 27:22-31:10, 41:10-42:13.

Fact No. 70: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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New York, New York

/s/ John C. Quinn

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